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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,711	03/19/2001	Karol Renau	RENAU-54531	9716

24201 7590 03/22/2004

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EXAMINER

CAMPBELL, THOR S

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 03/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/812,711

Applicant(s)

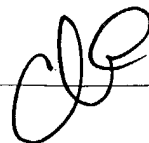
RENAU, KAROL

Examiner

Thor S. Campbell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-12,14-23,30,32-41,43-52,59 and 60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30,32-41,43-52 and 60 is/are allowed.
- 6) ☒ Claim(s) 1,3-12,14-23 and 59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Request for Continued Examination

The Request for Continued Examination filed on 03/01/2004 based on parent Application No. 09/812711 is acceptable and an RCE has been established. An action on the RCE follows.

Response to Amendment

It is noted that the amendment filed 03/01/04, cancels claims 2, 13, 24-29, 31, 42, 53-58 and 61-61. It is assumed that applicant meant to cancel claims 61-62 since no other presentation of claim 62 is offered.

Specification

The disclosure is objected to because of the following informalities: on numerous occasions applicant has referred to elements with the wrong element number, e.g. page 6, line 19 and 21, sensor element "30" should be "32". Applicant should edit the entire specification to correct all errors of this sort. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-6, 8, 9, 12, 14-18, 23, and 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Wade (US 941215).

Wade discloses a fluid heater comprising a heat exchanger (10) for exchanging heat and storing heat from an electric heating element to a fluid passing through the heat exchanger in a

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spirally shaped channel formed in a heat storage body, cover plates (11, 22) for sealing the channel, a fluid inlet and fluid outlet from which heated fluid is discharged/dispensed. It is noted that although Wade is silent on the function of the heat exchanger after the heating element is turned off, it has been held that the recitation that an element is "adapted to" or "enabled to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. In this case the heat exchanger of Wade has the ability to heat the incoming fluid to a stored heated temperature due to stored heat in the metal casing until the heating element is activated allowing for substantially rapid heating of the stored water to a dispensing temperature. It is noted that water will be stored in the channel 19, heated by the stored heat in the metal casing, until the opening of an inlet valve causes the water to be discharged. Although Wade does not disclose the device as serving the applicant's intended use, it is inherently capable of doing so.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, is rejected under 35 U.S.C. 103(a) as being unpatentable over Wade.

Wade discloses a fluid heater comprising a heat exchanger (10) for exchanging heat and storing heat from an electric heating element to a fluid passing through the heat exchanger in a spirally shaped channel formed in a heat storage body, cover plates (11, 22) for sealing the channel, a fluid inlet and fluid outlet from which heated fluid is discharged/dispensed. It is noted

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that although Wade is silent on the function of the heat exchanger after the heating element is turned off, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. In this case the heat exchanger of Wade has the ability to so perform. Wade does not explicitly disclose the heat exchanger being made from aluminum. It is generally well known and common knowledge in the art to use aluminum as a heat exchange body since it is known to have excellent heat conduction. It would have been obvious to one of ordinary skill in the art to use aluminum to make the heat exchanger of Wade since it was known in the art to use aluminum for heat exchangers.

Claims 7, 10, 11, 19, 20, 21, 22, are rejected under 35 U.S.C. 103(a) as being unpatentable over Wade in view of Applicant's admitted prior art.

Wade discloses a fluid heater comprising a heat exchanger (10) for exchanging heat and storing heat from an electric heating element to a fluid passing through the heat exchanger in a spirally shaped channel formed in a heat storage body, cover plates (11, 22) for sealing the channel, a fluid inlet and fluid outlet from which heated fluid is discharged/dispensed. It is noted that although Wade is silent on the function of the heat exchanger after the heating element is turned off, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. In this case the heat exchanger of Wade has the ability to so perform. Wade does not disclose specifically the use of the elements as claimed in claims 7, 10, 11, 19, 20, 21, 22, such as, inlet and outlet valves, flow

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meters and spray heads, temperature sensors for sensing the temperature of the heat exchangers and microprocessor control means for controlling the system. In the last office action, Official Notice was taken that it is generally well known in the art of heating and in particular the art of heating water for a beverage dispensers to use inlet and outlet valves to control the flow of liquid through the heat exchanger, temperature sensing means to sense the temperature of the heat exchanger, flow meters and microprocessor control circuits to control the heating and dispensing of the fluid, and spray heads for dispensing the fluid. Since applicant has not seasonably challenged the Examiner's Official Notice, such notice is taken as admitted prior art. It would have been obvious to include such alterations in the Wade device since it was well known in the art of beverage dispensing.

Allowable Subject Matter

Claims 30, 32-41, 43-52 and 60 are allowed.

The following is an examiner's statement of reasons for allowance: although the prior art shows the structure of the claimed apparatus and the ability to perform as intended, the prior art does not disclose the method as claimed including the steps of heating and maintaining the heating of the fluid stored in the channel for enabling the fluid to be rapidly heated by the heating means to a fluid dispensing temperature.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Response to Arguments

Applicant's arguments filed 03/01/04 have been fully considered but they are not persuasive. Applicant argues that Wade does not disclose a heat storing element capable of storing and maintaining at a stored heated fluid temperature a fluid within the channels, to the contrary Wade includes a metal casing which acts to store heat, and water will be stored in the channel 19, heated by the stored heat in the metal casing, until the opening of an inlet/outlet valve causes the water to be discharged. Aside from arguing that dependent claims are patentable in view of Applicant's view of Wade, Applicant makes no other argument with respect to the Examiner's rejection. It is further noted that since applicant did not seasonably challenge the Examiner's Official Notice, such Official Notice is considered prior art.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. GB 2035764 is similar to applicant's invention at least in part.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thor S. Campbell whose telephone number is 703-306-9042. The examiner can normally be reached on Tue-Fri 5:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Pothier can be reached on 703-308-0265. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TSC
3/19/04



THOMAS CAMPBELL
PATENT EXAMINER